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AUG 22 2006

OFFICE OF PETITIONS

In re Application of	:	
Peffly, et al.	:	
Application No. 10/758,656	:	ON PETITION
Filed: January 15, 2004	:	
Attorney Docket No.: 9144	:	

This is a decision on the petition under 37 CFR 1.182, filed March 13, 2006, requesting that a priority claim to foreign application WO 03/105793, international filing date June 10, 2003, be entered.

The petition is **dismissed**.

Application serial number 10/758, 656 was filed on January 15, 2004. It is noted that a claim of priority under 37 CFR 1.78(a)(1) was made to application 10/464,171 and under 37 CFR 1.78(a)(5) to provisional application 60/441,066 on the first page of the specification. No reference to foreign application WO 03/105793 is noted, however. The instant petition is now being filed requesting that the priority claim to foreign application WO 03/105793 be entered. Petitioner maintains that, because application 10/464,171 and foreign application WO 03/105793 are the same, by making a priority claim to 10/464,171 petitioner also made a priority claim to the subject foreign application.

Section 1.55 of the Code of Federal Regulations provides, in pertinent part, that:

37 CFR 1.55 Claim for foreign priority.

(a) An applicant in a nonprovisional application may claim the benefit of the filing date of one or more prior foreign applications under the conditions specified in 35 U.S.C. 119(a) through (d) and (f), 172, and 365(a) and (b).

(1)

(i) In an original application filed under 35 U.S.C. 111(a), the claim for priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. This time period is not extendable. The claim must identify the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The time periods in this paragraph do not apply in an application under 35 U.S.C. 111(a) if the application is:

(A) A design application; or

(B) An application filed before November 29, 2000.

(ii) In an application that entered the national stage from an international application after compliance with 35 U.S.C. 371, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and the Regulations under the PCT.

(2) The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by the processing fee set forth in § 1.17(i), but the patent will not include the priority claim unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323

(3) The Office may require that the claim for priority and the certified copy of the foreign application be filed earlier than provided in paragraphs (a)(1) or (a)(2) of this section:

(i) When the application becomes involved in an interference (see § 41.202 of this title),

(ii) When necessary to overcome the date of a reference relied upon by the examiner, or

(iii) When deemed necessary by the examiner.

(4)

(i) An English language translation of a non-English language foreign application is not required except:

(A) When the application is involved in an interference (see § 41.202 of this title),

(B) When necessary to overcome the date of a reference relied upon by the examiner, or

(C) When specifically required by the examiner.

(ii) If an English language translation is required, it must be filed together with a statement that the translation of the certified copy is accurate.

The claim of priority to the foreign application has not been filed within the period prescribed by 37 CFR 1.55(a)(1)(i). The claim of priority can still be made pursuant to 37 CFR 1.55(c) which provides in pertinent part that:

(c) Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a)-(d) or 365(a) not presented within the time period provided by paragraph (a) of this section is considered to have been waived. If a claim for priority under 35 U.S.C. 119(a)-(d) or 365(a) is presented after the time period provided by paragraph (a) of this section, the claim may be accepted if the claims identifying the prior foreign application by specifying its application number, country (or intellectual property authority), and the day, month, and year of its filing was unintentionally delayed. A petition to accept delayed claim for priority under 35 U.S.C. 119(a)-(d) or 365(a) must be accompanied by:

(1) The claim under 35 U.S.C. 119(a)-(d) or 365(a) and this section to the prior foreign application, unless previously submitted;

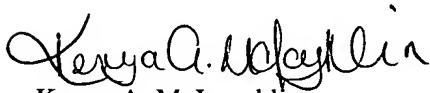
- (2) The surcharge set forth in § 1.17(t), and
- (3) A statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Petitioner must file a petition under 37 CFR 1.55(c) in order for the priority claim to foreign application WO 03/105793 to be entered. The claim of priority to the foreign application will not be entered at this juncture, and the petition under 37 CFR 1.182 is dismissed.

Deposit account 16-2480 will be charged the \$400.00 petition fee. See 37 CFR 1.182.

The application is being directed to Technology Center 1700, GAU 1751 for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.



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Office of Petitions